IN THE HIGH COURT OF BOMBAY AT GOA

SUO MOTU WRIT PETITION NO. 8 OF 2001

Concerned Citizens of Vasco
through its President
Shri T. T. Shridharan
with office at 23, Karma Point,
Vasco – da – Gama. ..... Petitioner

Versus

1. The Chairman,
Mormugao Port Trust,
Mormugao Harbour,
Goa.

2. State of Goa through
Chief Secretary,
Government of Goa,
Secretariat, Panaji.

3. Goa State Pollution Control Board,
Through its Member Secretary,
with office at 243, Patto, Panaji Goa.

4. The Secretary, Ministry of Environment & Forests,
Government of India, Paryavarn Bhavan,
CGO Complex, Lodi Road, New Delhi 110 001.

5. The Mormugao Municipal Council,
Through its Chief Officer,
Vasco-da-Gama, Goa.

6. Aprant Iron and Steel Pvt. Ltd.,
Dempo House, Campal,
Panaji, Goa.

7. Kalyani Steel Limited,
2nd Floor, Corporate Building,
Mundhva, Pune.

8. Mukund Limited,
Kalve, Thane,
Maharashtra.

9. Goa Carbon Limited,
Dempo House, Campal,
Panaji, Goa.

10. Tata Metallics Ltd.,
Terekhol Road, Redi,
Sundhudurg Dt. Maharashtra.

11. Kirloskar Ferrous Industries Ltd.,
Bevinahalli Village,
P.O. Hital, Koppal Dt., Karnataka.

12. Sathavahna Ispat Limited.,
17th Ward, Kolachalam Compound,
Bellary, Karnataka.

13. South West Trust Limited,
1st Floor, Port Users Complex,
Mormugao, Harbour, Goa. ..... Respondents

Mrs. Norma Alvares, Amicus Curiae for the Petitioners.

Mr. V. B. Nadkarni, Senior Advocate with Mr. Y. V. Nadkarni, Advocate for the Respondent no.1.

Mr. S. S. Kantak, Advocate General with Mr. A. Kamat, Addl. Government Advocate for the Respondent no.2.

Mr. A. N. S. Nadkarni, Senior Advocate with Mr. H. D. Naik, Advocate for Respondent nos. 6, 9 and 11.

Coram :- F. M. REIS,
U. V. BAKRE, JJ.

Date : 24th February, 2012

JUDGMENT *(Per F. M. Reis, J.)*

A letter received on behalf of Goa Citizens' Watch Dog Association, raising a grievance in respect of the atmospheric pollution primarily owing to the careless handling and transportation of material like coal dust, aluminium powder,

iron ore, etc., through Vasco City without adequate/suitable protection measures, which affect the people of Vasco da Gama, was converted into a Suo Motu Writ Petition. On the demise of the latter-Petitioner, concerned Citizens of Vasco was impleaded as Petitioner.

2. The grievance raised in the above Petition is that the presence of dust particles caused by the spilling of material such as coal and bringing in aluminium powder to feed the requirements of the growing industrial development as well as the non-compliance of the laid down norms in respect of the storage, handling and transportation of the said articles spread out and enter the atmosphere. It was further contended that even a casual visitor to any of the buildings in Vasco City, would immediately be aware of the constant and heavy presence of dust particles in the area and all around providing careless handling and transportation of the said materials and/or without suitable protections. It was further contended that coal/coal dust is being brought into Goa through the Mormugao Port and other ports in India and it is therefore necessary that the Chairman of the Mormugao Port Trust and the Government be directed to issue necessary directions with regard to the compliance of the stipulations laid down in the import/storage transportation of coal, handling, etc./coal dust, aluminium powder, etc. It is further contended that unless such measures are carried out, the conditions would further deteriorate and cause health hazard to the residents of Vasco da Gama. It was further contended that Mormugao Port Trust have been handling coal/coke in large quantities since the year 1999 as other ports such as Chennai Port Trust, had rejected such cargo. It is further their contention that the coal handling operations must be done far from any habitation and there should be sufficient buffer stock between the operation and the habitation so as to act as a barrier to prevent any dust generated, from

reaching the habitation. It was further pointed out that the coal handling must be done in a closed area and there must be continuous spraying of water on the coal/coke in the location where loading and unloading is carried out. Another grievance which was also raised was with regard to the transportation which was being carried out through the City of Vasco da Gama which is causing a health hazard to the Citizens living in Vasco. It was further their contention that such activity of transportation of such material is unauthorised and illegal and, consequently prayed to permanently restrain the Mormugao Port Trust from carrying out coal handling operations at the Mormugao Port and in the alternative for an Order in nature of a writ to permanently restrain the Mormugao Port Trust and/or its agents from transporting coal through the City of Vasco. Further a direction was also sought to Mormugao Port Trust to obtain an environmental clearance for its operation before continuing with its coal handling operation at Mormugao Harbour.

3. On 03.09.2001, the Mormugao Port Trust filed an affidavit and, inter alia, pointed out that reconstruction of berth no. 5A and 6A would be completed by December 2002 and thereafter be handled at the new berths situated away from the Vasco city of Vasco da Gama. A notice was also issued to the Indian Oil Corporation Limited, Hindustan Petroleum Limited and Bharat Petroleum Pvt. Limited, who also filed their affidavits.

4. This Court by Order dated 04.02.2001, after taking note of the affidavits filed by the said Companies, held that there was no air pollution by poisonous fumes emitted by these Companies and hence the notices issued to the said Companies were discharged.

5. The State Government on 09.06.2003, constituted a Coal Pollution Monitoring Committee which recommended that coal handling at berths 10 and 11 should be stopped once berths 5A and 6A are constructed. The berths 5A and 6A were completed somewhere in June, 2005. The Mormugao Port Trust accordingly directed transfer of its coal handling operations to the new berths. In the meanwhile, a Writ Petition came to be filed bearing no. 151/2005 by some Companies somewhere in August 2005 praying, inter alia, that the coal handling operations should be continued at berth nos. 10 and 11. The said Writ Petition no. 151/2005 came to be disposed of on 20.09.2005, with a direction to the Secretary, Ministry of Shipping (MoS) to examine the Companies grievances and take a final decision in consultation with the State Pollution Control Board. Accordingly, on 15.12.2005, the Secretary of the Ministry of Shipping decided that the coal handling can continue at berth nos. 10 and 11 provided the users undertake environment protection measures in consultation with the State Control Pollution Board.

6. In the meanwhile, an application came to be filed in the above proceedings by the Amicus Curiae being MCA no. 386/2006 praying, inter alia, to stop all coal handling operations at berth nos. 10 and 11. The State Pollution Control Board filed an affidavit to the said application on 20.11.2006 stating, inter alia, that the Secretary of the Ministry of Shipping had misquoted the Board's Chairman with regard to the continuance of coal handling operations at berths 10 and 11 and categorically affirmed that coal handling activities at berths 10 and 11 must be stopped.

7. Looking into the contentious issues with regard to the dust pollution

which emanated from the handling and loading of coal and its transportation, this Court by an Order dated 04.04.2007, inter alia, found that although it is stated on behalf of the Respondents Mormugao Port Trust that 90 percent of the coal and coke handling activity is already shifted from berths 10 and 11 to berths 5A and 6A of the Mormugao Port, it was stated by the Amicus Curiae that the dust emanated from the berths 10 and 11 continues to cause pollution to the residential areas in the port town. It was also noted that the Goa State Pollution Control Board has been monitoring the said position but this has not been accepted by the concerned Respondents who wanted that the operation should continue at berths 10 and 11. Accordingly, this Court directed that the NEERI which is an independent agency be appointed to monitor the ambient air quality in the town of Vasco da Gama, in order to ascertain as to whether the air pollution from coal handling operations at berths 10 and 11 are violating the standard set out for the port areas and also standard set outs in the residential areas at the port town. Further directions were also issued to NEERI to set up devices with regards to dust operations at the points indicated by the Amicus Curiae on the plan and that NEERI would be free to set up the devices at set out points in case they consider it necessary other than the points so suggested. On 30.06.2008, Agency NEERI reported high Respiratory Particulate Matter and Suspended Particulate Matter levels at the Port and in Vasco Town which warrant immediate attention by the authorities. The said Agency further recommends various immediate short term and long term measures to be effected so as to control the alarming measures of pollution found therein.

8. An affidavit also came to be filed on behalf of the Goa Pollution Control Board, the Respondent no.3. In the order dated 12.03.2009, this Court noted that the said Pollution Control Board in principle had accepted the

suggestions made by NEERI but the ultimate decision with that regard would be taken at the Board's subsequent meeting. It was further noted that the Board had also recommended additional measures to be taken by the concerned Respondents and that the Board would take periodical inspections and consider suggestions of NEERI and submit them.

9. It is further part of the records of the above Petition as noted in the Order dated 30.11.2009, that Respondent no.1 informed that NEERI had submitted a report and that the recommendations are being implemented to the extent MPT was required to implement the same. Subsequently, an affidavit came to be filed on behalf of the Respondent no.3 on 25.02.2010 stating, inter alia, that in compliance with the recommendations of NEERI, the said Respondent carried out monitoring for four weeks so as to ascertain the effect of the ambient air quality pursuant to the installation of additional length of wind shields/screens of 100 metres length. Accordingly, such inspections were carried out by the Board. Based on the said inspections, the Board directed the Respondent no.1, the Mormugao Port Trust to submit a detailed point wise compliance of the recommendations made by NEERI as well as additional measures undertaken by the Mormugao Port Trust and, thereafter, a meeting was held between the Chairman of the Mormugao Port Trust, the Member Secretary of the Board and the Minutes of the said discussion were drawn and thereafter placed before the Board at its 96th meeting held on 09.02.2010. Consequently, the following directions were issued to the Mormugao Port Trust :

"(a) The height of coal stacked at Berth no. 10 and 11 should not exceed 7 metres;

(b) The efficiency of the sprinkler system to be improved for a longer reach. Mormugao Port Trust should install flow meters and maintain a log book for utilization of water for sprinkling on daily basis;

(c) Carry out a techno-economic feasibility for mechanisation of coal/coke handling at berth no. 10 and 11 for construction of closed sheds for storage of coal and coke within forty five days and submit the report to the Board;

(d) Erection of additional barricade of G.I. Wind shields on the city side of 100 metres length, within 90 days and submit the compliance report to the Board;

(e) Carrying out Ambient Air Quality Monitoring at the same locations where the National Environmental Engineering Research Institute (NEERI), Nagpur had done, through a laboratory recognized by the Ministry of Environment and Forests, Government of India, twice a week and submit reports to the Board every month;

(f) Mormugao Port Trust should ensure that the trucks leaving the premises are not overloaded and the coal is covered

properly with tarpaulin."

10. Thereafter, an affidavit came to be filed on 19.07.2010 on behalf of the Respondent no.1, stating, inter alia, that the Respondent in order to prepare the Feasibility Report of the coal handling facilities at the berth no.11 has submitted their Feasibility Report dated 09.06.2010. It was further pointed out that upon consideration of the feasibility report, the Respondent no.1-Board had decided to develop 4 MMTPA Mechanised Coal Terminal at berth no.11. The salient features of the said proposed 4 MMTPA Coal Terminal at Berth no. 11 are as follows :

"(a) Coal will be handled with screw type of unloading system and transported to closed/pipe conveyors and the same will be unloaded in domes/silos;

(b) 4 Nos. of silos are proposed with a total capacity of 3,00,000 tons approximately;

(c) The IRR projected is between 20 to 25%;

(d) Total cost of the project including plant and machinery and civil works is 425 crores approximately;

(e) Since handling system is fully mechanised, state of art technology and scientific method of storage will lead to a pollution free environment."

11. Thereafter, an affidavit came to be filed on behalf of the Respondent

no.3 which pointed out the decision taken by the Board on its 99th meeting held on 28.10.2010, whereby directions came to be issued to the MPT to comply with the following measures :

> "(a) Ensure that the construction of a closed shed and mechanization of coal handling at berth no. 11 is taken up on priority after obtaining Environmental Clearance, Coastal Regulation Zone Clearance and Consent to Establish from this Board, under the Water Act and the Air Act.
>
> (b) Ensure that the construction of a closed shed and mechanization of coal handling at berth no. 11 is completed by 30.06.2012.
>
> (c) Install a continuous Air Quality Monitoring Station as per the Central Pollution Control Board guidelines, at MPT Institute for monitoring PM^{10} and $PM^{2.5}$, within a period of 90 days from the date of receipt of these directions."

12. The Pollution Control Board thereafter found that the Mormugao Port Trust in accordance with the directions issued based on NEERI report, regularly adopted following measures :

> "(a) Regular spraying of water by tankers on roads, berths and stacks by port users.
>
> (b) Sweeping of roads using a mechanical

sweeper by port users.

(c) Installation of 8 nos. high mast water sprinkling systems with nozzle arrangements for spraying on stacks and roads.

(d) Construction of dedicated elevated roads for truck movements.

(e) Covering of trucks/rail wagons carrying cargo with silpaulin before leaving the port area.

(f) Covering of coal/coke stacks with silpaulin.

(g) Plantation of trees annually on the periphery of the port operational area.

(h) Speedy evacuation of cargo.

(i) Restriction of cargo stock pile to 5 metres.

(j) Installation of wind screens/shields 8.1 metres high.

(k) Cleaning of body and tyres trucks using compressed air.

(l) Stoppage of cargo handling during very strong/gusty winds.

(m) Cargo stock piles are being covered effectively with silpaulin/HDPE

(n) Monitoring of AAQ through an approved laboratory etc.

13. Subsequently, on 10.01.2011, the Respondent no. 3 issued directions under Section 31-A of the Air Act to the Respondent no.1 to instal continuance Air Ambient Quality monitoring station at the MPT Institute and also furnish the time schedule for the mechanization of berth no.11. Consequently, on 10.03.2011, the Respondent no.1 submitted the action plan to the Respondent no.3, inter alia, stating that the construction of closed shed and mechanization of coal handling berth no.11 would be completed by October, 2014. It was further pointed out that continuance Ambient Air monitoring at the Mormugao Port Trust Institute would commence with effect from April 2011. Thereafter, the Respondent no.3 in June 2011 brought to the notice of this Court that the Board had accepted the time frame to complete the mechanization of berth no. 11 by October, 2014. Thereafter, in order to ascertain as to whether after the completion of the mechanized coal handling at berth no. 11, the present handling of coal at berth no.10 would continue, the Respondent no.1 filed an affidavit to the effect that on completion and commissioning of the mechanization and covered storage facilities at berth no. 11, the Mormugao Port Trust will discontinue the coal handling at berth no.10.

14. Another affidavit came to be filed by the Mormugao Port Trust on 16.08.2011 and at para 4, in the said affidavit, it is stated as under :

"4. I say that the Respondent no.1 will allow

the Mormugao Port Users to continue handling coal and shall accommodate the said Mormugao Port Users to handle coal at Berth no. 7 or Berth no. 11 after mechanization and storage of coal in closed shed project and at Berth No. 10 till the proposed completion and commissioning of the said project in October, 2014 depending on the berth availability."

15. From the foregoing facts on record, we find that the Board is monitoring the implementation of the interim measures taken by the Respondent no.1 to control the pollution on account of the loading and unloading of coal at the Mormugao Port. The recommendations of the NEERI which is an independent agency have been substantially accepted by the Respondent no.1 and the Respondent no.3 has monitored such implementation and issued further directions as enumerated herein above. We also find that after the mechanization of berth no.11, the handling of coal would be discontinued at berth no. 10 and, as such, the grievances raised in the above Petition, would be substantially redressed. The reports by the Respondent no.3 have also suggested that on account of the implementation of the measures as directed, the level of pollution has decreased and hence the measures appear to be adequate. Hence, we find that no purpose would be served in further keeping the above Petition pending.

16. We also record with appreciation the assistance rendered to us in disposing of the above Writ Petition by the learned Amicus Curiae Mrs. Norma Alvares, who has taken all efforts to bring all relevant material on record to assist this Court in disposing the above Suo Motu Writ Petition.

17. We, accordingly, dispose of the above Petition with the following :

ORDER

(i) We, accordingly, deem it appropriate that all the directions issued by the Respondent no.3 to the Mormugao Port Trust by its letter dated 9.02.2010, as mentioned in para 9 herein above, shall be treated as directions issued by this Court.

(ii) We also accept the time schedule given by the Respondent no. 1 on 10.03.2011 and direct that the Respondent no.1 shall complete the construction of the closed shed and mechanization of the handling of berth no.11 on or before October, 2014.

(iii) We also accept the affidavit of the Respondent no.1 referred to at para 13 herein above and direct that on completion and commissioning of the mechanization and covered storage facilities at berth no.11, the Respondent no.1 will discontinue the coal handling at Berth no. 10.

(iv) The Respondent no.3 is directed to monitor the pollution at the Mormugao Port Trust from time to time to protect the environment and issue directions as necessary from time to time in accordance with law.

(v) The Respondent no.1 is directed to continue with all the measures taken based on the NEERI report as mentioned at para 12 herein.

(vi) Liberty is given to the parties to move this Court in

case of any difficulty in the implementation of the above directions.

(vii) Rule is disposed of in the above terms.

18. Petition stands disposed of accordingly.

F. M. REIS, J.

U. V. BAKRE, J.

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Suo Moto WP 8/2001

List of Dates

Dates	Particulars	Pg No.
1999	Coal handling operations commence at berth nos. 10 & 11 at Mormugao Port Trust (MPT) adjacent to Vasco city.	
2001	A letter petition regarding severe coal dust pollution in Vasco city is registered as S.M.W.P 8/2001.	
3-9-2001	MPT files affidavit that reconstruction of berths 5A and 6A will be completed by December 2002 & coal will thereafter be handled at the new berths, situated away from the city.	17
9-6-2003	State Govt. constitutes a Coal Pollution Monitoring Committee which recommends that coal handling at berths 10 and 11 should be stopped once berths 5A & 6A are constructed.	117
June 2005	Berths 5A & 6A are completed. MPT directs transfer of all coal handling operations to the new berths.	
Aug 2005	WP No. 151/2005 is filed by some companies for continuing coal handling operations at berths 10 & 11.	
20-9-2005	WP 151/2005 is disposed of with a direction to Secretary, Ministry of Shipping (MoS) to examine the companies' grievances and take final decision in consultation with State Pollution Control Board (SPCB).	8 (MCA 386/06)
15-12-2005	Secretary, MoS decides that coal handling can continue at berths 10 & 11 provided the users undertake environment protection measures in consultation with the SPCB.	11 (MCA)
2006	MCA 386/2006 is filed by Amicus Curiae to stop all coal handling operations at berths 10 & 11. High Court directs petitioners in WP 151/2005 to be joined as respondents in the SMWP.	
20-11-2006	SPCB files affidavit that Secretary MoS has misquoted the Board's Chairman re. permanent continuance of coal handling operations at berths 10 & 11 and categorically affirms that coal handling activities at berths 10 & 11 must be stopped.	119 (MCA)
4-4-2007	High Court appoints NEERI to monitor the ambient air quality (AAQ) in the port area and Vasco city & report whether the operations are violating the standards.	

30-6-2008	NEERI reports high Respiratory Particulate Matter (RPM) and Suspended Particulate Matter (SPM) levels at the Port and in Vasco town, which warrants immediate attention by the authorities. The report recommends various immediate, short term and long term measures.	NEERI Report
2008 to 2010	SPCB issues several directions to MPT in terms of the recommendations in the NEERI report.	
26-2-2010	SPCB directs MPT to carry out techno-economic feasibility study for mechanization of coal/coke at Berth Nos 10 & 11.	353
19-7-2010	MPT submits feasibility report to convert the existing Berth No.11 into a fully mechanized, state-of-the-art coal handling terminal, having the following features: (i) Storage of coal in four monolithic concrete domes. (ii) Enclosed, coal vessel unloading equipment. (iii) Fully enclosed, continuous belts to convey the coal from the vessel to storage or the railway wagon loader.	309
10.1.2011	SPCB issues directions u/s 31A of the Air Act to the MPT to install continuous Air Quality Monitoring station at MPT Institute within 90 days. Also time schedule for mechanisation at Berth No 11	379
10.3.2011	MPT submits action plan/time schedule for compliance with SPCB's directions as follows: i. Construction of closed shed and mechanization of coal handling at berth No. 11 will be completed by October 2014. ii. Continuous ambient air monitoring at MPT Institute will commence w.e.f. April 2011	321 (MCA)
June 2011	SPCB files affidavit that time frame of October 2014 has been accepted by the Board.	384
11.7.2011	MPT files affidavit that on completion and commissioning of the mechanization and covered storage facilities at Berth No. 11, MPT will discontinue coal handling at Berth No 10.	323 (MCA)
16.8.2011	MPT files affidavit that it will allow the Mormugao Port Users to continue handling coal at Berth No 7 or 11 after mechanization project is completed and commissioned and at Berth No 10 till the completion of the project, depending on berth availability.	329 (MCA)

30-6-2008	NEERI submits its report to High Court. The report states that "the AAQ data indicates high Respiratory Particulate Matter (RPM) and Suspended Particulate Matter (SPM) levels at MPT berth nos. 10 and 11 as also on most of the other identified sites of Vasco da Gama and warrants immediate attention of MPT / MPUA authorities to take necessary measures to control particulate emission generated due to cargo handling/material transfer activities." The report recommends immediate, short term and long term measures, including shifting of coal handling operations to a new terminal proposed to be constructed at berth no. 7.	NEERI Report
10-9-2008	SPCB issues directions to MPT as per NEERI's recommendations and directs MPT to submit a compliance time schedule, including shifting operations to berth no. 7.	230
21-11-2008	SPCB files affidavit that coal handling activities can continue at berths 10 & 11 till berth no 7 is constructed.	242
2-3-2009	SPCB issues directions to MPT u/s 31A of Air Act to be complied with by 30.4.2009 as its directions dated 10.9.2008 have not been complied with.	269
23-6-2009	SPCB issues directions to MPT u/s 31A of Air Act to erect additional 100 metres silpaulin wind curtain at the wharf (previous direction was 120 meters length, 8.1. m height) by 30.9.2009	292
7-10-2009	SPCB issues the following directions to MPT u/s 31A of Air Act for compliance by 30-6-2010: (i) Stockpile the dusty cargo is closed sheds. (ii) Install mobile bins with water spray nozzles along side the wharf. (iii) Install closed belt conveyor system to transfer cargo directly from the vessel to the closed storage sheds. (iv) Install an efficient, cost effective, fugitive dust emission control system at critical dust generating points on the port. (v) Make arrangements for mechanized coal and coke handling at Berth No 7.	297
26-2-2010	SPCB issues directions to MPT u/s 31A of Air Act to: (i) Carry out techno-economic feasibility study for mechanization of coal/coke at Berth Nos 10 & 11. (ii) Erect additional barricade of G.I wind shields 100 meters length on the city side within 90 days.	353

19-7-2010	MPT submits feasibility report to convert the existing Berth No.11 into a fully mechanized, state-of-the-art coal handling terminal, having the following features: (i) Storage of coal in four monolithic concrete domes. (ii) Enclosed, coal vessel unloading equipment. (iii) Fully enclosed, continuous belts to convey the coal from the vessel to storage or the railway wagon loader.	309
9.9.2010	SPCB issues directions u/s 31A of the Air Act to the MPT to show cause why action should not be initiated against MPT for operating the Port (particularly coal handling operations at berths 10 and 11) in a manner that is causing air pollution in Vasco town and for failure to comply with earlier directions issued to the MPT. SPCB also directs the MPT to submit detailed clarifications in regards to the feasibility study and the development of berth No. 7 as the Board has expressed dissatisfaction with the presentation made to the Board by officials of the MPT on 19.8.2010	367
10.1.2011	SPCB issues directions u/s 31A of the Air Act to MPT to submit a compliance report and action plan/time schedule within 15 days as regards following directions: (i) Ensure that construction of closed shed and mechanization of coal handling is completed by 30.6.2012. (ii) Install continuous Air Quality Monitoring station at MPT Institute within 90 days.	379
17.1.2011	SPCB issues directions u/s 31a of the Air Act to the director of Transport to ensure that trucks carrying ore are adequately covered and not overloaded while leaving the premises of the MPT are not overloaded, as was observed by its officials during the inspections conducted by the Board.	P. 382
10.3.2011	MPT submits action plan/time schedule for compliance with SPCB's directions as follows: i. Construction of closed shed and mechanization of coal handling at berth No. 11 will be completed by October 2014. ii. Continuous ambient air monitoring at MPT Institute will commence w.e.f. April 2011	387 (MCA)

IN THE HIGH COURT OF BOMBAY AT GOA

SUO MOTO WRIT PETITION NO. 8 OF 2001

THE CONCERNED CITIZEN OF VASCO THROUGH ITS PRESIDENT, SHRI T. T. SHRIDHAVAN ... Petitioner

Versus

THE CHAIRMAN, MORMUGAO PORT TRUST AND 4 ORS., ... Respondents

Mrs.Norma Alvares, Amicus Curiae.

Mr. V.B. Nadkarni, Sr. Advocate with Mr. Y.v. Nadkarni For R. 1.
Mr. S.S. Kantak, Ag with Ms. R. Chodankar, Aga for R.2.
Mr. J. Godinho, for Pollution Control Board.
Mr. A.N.S. Nadkarni and Mr. H.D. Naik for R.6, 9 and 11.
Mr. S.D. Paidyar, for R.5.

Coram:- S.A.BOBDE &
N. A. BRITTO, JJ.

Date:- 4th April, 2007

P.C.:

Heard Mrs. N. Alvares, learned Amicus Curaie and learned Counsel on behalf of the respondents.

2. Although it is stated on behalf of the respondent, Mormugao Port Trust that 90% of the coal and coke handling activity is already shifted from Berths No.10 and 11 to Berth No.5A and 6A of the Mormugao Port Trust, it is stated by the learned Amicus Curiae that dust emanating from Berths No.10 and 11 continues to cause pollution in residential areas of port town.

3. The Goa State Pollution Control Board had been monitoring the said pollution, but that has not been acceptable to Respondents No.6, 9 and 11 who are the port users at Berths No.10 and 11. We, therefore, deem it

appropriate that the dust pollution be monitored by NEERI which is an independent agency. Learned Amicus Curiae has suggested that considering the location of Berths No.10 and 11, vis-a-vis the residential areas coal and coke dust emanating from handling of coal and coke from berths No.10 and 11, could be monitored by setting up monitoring devices/stations at points No. (i) - (Hotel Ricone or Classic Building); (ii) - (Karma point); and (iii) - Anand Bose building or Colaco Arcade on the plan submitted by her.

In view of the above, we issue the following direction/s :-

(1) NEERI is hereby appointed to monitor the Ambient Air quality in the town of Vasco-da-Gama in order to ascertain whether air pollution from the Port handling operations at Berths No.10 and 11 are violating the standards set out for Port areas and also the standards set out for residential areas of the port town.

(2) We direct NEERI to monitor the dust pollution emanating from Berths No.10 and 11 by setting up necessary devices at the points indicated by the learned Amicus Curiae on the plan submitted by her. NEERI would be free to set up the devices at different points in case they consider it to be necessary, other than the points indicated by the learned Amicus Curiae.

(3) We direct that monitoring of dust pollution emanating from Berths No.10 and 11 be completed by NEERI preferably on or before 15th May, 2007 and submit a report thereafter as expeditiously as possible.

(4) It is made clear that the Bill submitted by NEERI would be borne by the respondents No.6, 9 and 11.

(5) The plan submitted by the learned Amicus Curiae be marked "X" and shall form part of the Order.

S.A.BOBDE, J.

N. A. BRITTO, J.

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IN THE HIGH COURT OF BOMBAY AT GOA

Suo Moto P.I.L. WRIT PETITION NO.8/2001

The Concerned Citizen of Vasco ...Petitioner

V/s.

The Chairman, Mormugao Port Trust & ors ...Respondents

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Panaji dated
8-9-2003

Adv. Norma Alvares
Amicus Curiae

IN THE HIGH COURT OF BOMBAY AT GOA

Suo Moto P.I.L. WRIT PETITION NO.8/2001

The Concerned Citizen of Vasco ...Petitioner
with office at 23, Karma Point
Vasco-da-Gama, Goa.

V/s.

1. The Chairman, Mormugao Port Trust
Mormugao Harbour, Goa

2. The State of Goa, through its Chief
Secretary, Secretariat, Panaji, Goa

3. The Goa State Pollution Control Board
through its Member Secretary with office at
243, Patto, Panaji, Goa

4. The Secretary,
Ministry of Environment & Forests,
Government of India,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi 110 001.

5. The Mormugao Municipal Council
through its Chief Officer,
Vasco-da-Gama, Goa. ...Respondents

To:
The Hon'ble Justices,
High Court of Judicature at Bombay,
Panaji Bench, Goa

MAY IT PLEASE YOUR LORDSHIPS

1. The Goa Citizens' Watch-Dog Association, the Petitioner herein is a registered Society having been registered with the Registrar of Societies Act under No. 27/GOA/99. This Association has been in the forefront to expose, combat and resolve the various problems that affect the daily working of the people especially of Vasco-da-Gama where the Association has its office.

2. In the process of taking up matters on behalf of the public for the betterment of the Society, the Asspciation has been successful on many fronts. Where possible, the Association deals directly with the organisation / Government Body concerned so that the thorny issues are settled after mutual discussions. There are issues however, which affect a wider section of the public and to resolve it, extraordinary measures are called for, one such issue is the present state of the atmospheric pollution presently affecting the entire Vasco city growing steadily day by day.

3. The cause of the pollution is the transporting, loading, unloading and handling of coal & iron ore. The spillage that arises out of the handling of these substance is carried to all corners of the Vasco and suburbs consequent to the inshore wind that affects the port town. The worst affected public are the ones living at Headland Sada, of the port area as well as in the heart of the city through which trucks ply carrying coal, iron ore and aluminium powder.

4. Till recently, the port area used to handle only the export of iron ore which do not cause as much poldution as of now with the increased in the export of these items as well as of coal and bringing in aluminium powder to feed the requirements of the growing industrial development, the pollution level has risen to an all time high.

5. The presence of dust particles caused by the spillage of the above as well as the non-compliance of the laid down norms in Goa viz: the storage, handling and transportation of the above articles/considerable quantities of these are spread out and enter the atmosphere. The common man in such is forwarded to inhaling these noxious dust particles causing respiratory problems and allied health atmosphere permeates, practically every residence, offices, shops, hospitals in Vasco-Da-Gama, as a result of this, the increase in the number of respiratory complaints has dramatically risen in the last few months. Even a casual visitor to any of the buildings in Vasco would immediately become aware of the constant and heavy presence of dust particles in the air and all around, primarily owing to the careless handling and transportation of the above materials without adequate/suitable protective measures. Unless this unchecked activity is brought to a Halt the health of the citizens of Vasco is bound to deteriorate especially of those advance in age.

6. Your Lordships may take cognizance of the fact that while coal/coab dust is being brought into Goa to the Mormugao Port, no other Port in India is willing to accept the same. Under such circumstances, why the Government of Goa has permitted the import and transportation of coal, other substances to the extreme detriment of the citizens health is not understood. This aspect when taken in conjunction with the poisonous fumes emitted by the Indian

Oil Corporation, The Hindustan Petroleum Ltd. and the Bharat Petroleum Ltd., the combined effect on the health of the citizen of Vasco-Da-Gama can be well imagined. The poisonous fumes emitted by the Petroleum companies is to a certain extent tolerable as this is not a regular phenomenon, whereas the pollution caused by the handling and transportation of the materials referred above poses, continued health hazards to the citizens of Vasco-Da-Gama.

7. It is therefore necessary that the Chairman of the Mormugao Port Trust, and the Government of Goa are issued with the necessary directions with regards to the compliance of the stipulations laid down in the import, storage, transportation, handling of coal/coal dust, iron ore, aluminium powder etc. Unless the same is done, the condition, which is steadily deteriorating and causing unavoidable health hazards to the residents of Vasco-Da-Gama and suburbs will reach a proportion which be beyond control.

8. The Goa Citizens' Watch Dog Association therefore prays that the Government of Goa and Mormugao Port Trust be ordered as per directives issued by your Lordships so as to control the pollution level and if possible to eliminate the same completely.

9. Petitioner states that Mormugao Port Trust (MPT) has been handling coal/coke in large quantities only since

1999. This is largely due to the fact that Chennai Port Trust has started rejecting such dirty cargo in the last few years. The strong sea winds blow the coal dust into Vasco city, severely affecting the health and environment of people all over the town, including residential buildings, commercial establishments, roads, market places, etc.

10. Except for a brief period during the monsoons when the natural elements curb the flying coal dust, the rest of the year citizens are forced to breathe in coal dust day and night. Annexed hereto at Exhibit A are photographs which show the proximity of the coal handling operations to the city, the open stacks of coal and the coal dust deposited daily on the doorsteps and in the homes of the people of Vasco town.

11. Many people are seriously ill due to the side effects of coal dust pollution. Respiratory disorders have increased manifold in the city and children are exposed to serious health hazards including allergies; T.B. asthma and bronchitis. The health hazards of coal dust pollution are well-documented. Petitioners annex hereto the Occupational Safety and Health Adminstration guidelines for coal dust pollution, developed by the United States Department of Labour, which document the effects of repeated exposure of people to coal dust pollution. The health hazard information states that the routes of exposure to coal dust are

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through inhalation, ingestion and eye contact and that coal dust causes a host of respiratory ailments in humans. Annexed hereto at Exhibit B is a copy of the OSHO guidelines.

12. Being aware of the health hazards of coal dust pollution several citizens and NGOs from Vasco town, including the petitioners, have repeatedly petitioned the authorities to take remedial action to stop the loading and unloading of coal at the MPT and its transportation through the city. Annexed hereto at Exhibit C colly are some of the letters written by citizens and NGOs to the authorities and the responses received from some of them to the citizens' complaints.

13. Petitioners draw attention in particular to letter dated 25.03.2002 of Jt. Secretary Mines, Government of Goa which states that the matter of coal dust pollution at Vasco is under active consideration of the Government in order to locate suitable site for setting up an ore unloading terminal. This itself is an admission that the present site is entirely unsuitable for coal handling operations and as it is impacting negatively on the health and environment of the citizens, it should be stopped altogether.

14. The problem of coal dust pollution in Vasco has also been investigated by other authorities including the Ex-

ecutive Magistrate, Mormugao and the Department of Science Technology and Environment. Pursuant to complaint of dust pollution received from a citizen, the Court of the Executive Magistrate, Mormugao Taluka, Vasco-da-Gama registered Case No. MAM/MAG/133 Cr.P.C./14/2000 - State v/s Chairman, Mormugao Port Trust.

15. On 25-4-2002 the PI Vasco Police submitted report on the nature of activities generating coal dust pollution at MPT. The concluding paragraph of the report states:

> From the investigation and enquiries conducted into this matter, in my opinion this whole activity of unloading the coal on different berths of Mormugao Port and subsequent activities of transporting this consignment to different destinations from Goa and Karnataka by truck and wagons, using the road causes pollution and poses danger to the health and safety of motorists, pedestrians and public of Mormugao taluka in general. Hence necessary action may please be initiated against the defaulter.

16. Thereafter, on 4th July 2002 the Executive Magistrate, Mormugao issued conditional order u/s 133 Cr.P.C to the MPT to take certain preventive steps to control the dust pollution. As the MPT in their reply stated that effective steps had been taken by them, the Court of the Executive Magistrate appointed the Goa State Pollution Board to in-

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vestigate the matter and enquire into whether the Respondent is implementing the prescribed rules during the conduct of trade of import of coal/coke.

17. It appears that the State Pollution Board by letter dated 22-4-2003 has requested an amount of Rs. 4 lakhs as expenses for conducting the said investigation. The same is reflected in letter dated 22nd May 2003 addressed by the Executive Magistrate to the Secretary (Environment) Govt. of Goa. Annexed hereto as Exhibit D colly are copies of documents pertaining to the above mentioned case registered in the Court of the Executive Magistrate, Vasco-da-Gama which the petitioner has been able to procure. These include copies of the police report dated 25.4.2002, orders dated 4-7-2002, 2-8-2002, and letters dated 4-10-2002 and 22-5-2003 referred to in paras 14- 17.

18. Pursuant to an agitation by the citizens of Vasco demanding closure of coal handling operations due to the intense coal dust pollution faced by them, coal handling operations were briefly stopped by the State Government in the first week of June. A Committee was thereafter constituted to monitor and control the severe problem of coal/coke dust pollution faced by the city of Vasco. Govt. Notification dated 9-6-2003 is annexed hereto as Exhibit E. Petitioner does not know what is the outcome of the said committee

19. Petitioner states that the so-called anti-pollution measures proposed by MPT like tree planting, spraying water on the roads etc. are merely an eye-wash and can have no significant impact on the pollution generated. Even the proppsed shifting of unloading operations to berth No. 5 or 6 will not reduce the pollution significantly as the coal unloading operations are not proposed to be done in covered area.

20. Petitioner submits that coal handling operations must be done far from any habitation. There must be sufficient buffer zone between the operations and the habitation, which should be afforested so as to act as a barrier to prevent any dust generated from reaching the habitation. Moreover coal handling must be done in enclosed areas and there must be continuous spraying of water on the coal/coke in the loading/unloading areas. These are minimum essential requirements for curbing coal dust pollution.

21. Petitioner is informed that at Ennore port which handles coal, the operation is entirely mechanised. The grab lifts coal from the hold of the ship onto the hoppers which have nozzles that spray water on the grab and the coal. The hopper then discharges the coal onto the conveyors which are enclosed in casings. In this manner the coal is taken to the TNEB Power Plant and stacked. The size of the coal stack is also regulated to maintain mini-

mum buffer stock only. Thus coal dust pollution is minimised.

22. None of these measures are followed at MPT. All the unloading of coal is done in the open and even the transportation of coal by trucks or by rail often goes without any covering, leading to coal dust flying all over the town, enroute.

23. Petitioner also submits that the coal handling operations at Vasco require environment clearance from the Ministry of Environment under Environment Assessment Notification issued in 1994. The Ministry of Surface Transport has set out guidelines for environment clearance dated 9.7.1997 to be followed by the Empowered Committee for Environment Clearance (ECEC) in the Ministry of Surface Transport. To the best of petitioner's knowledge, such environment clearance has not been obtained by the MPT from the authorities. Annexed hereto at Exhibit F is a copy of the Guidelines for Environment Clearance.

24. In addition to the above grounds, petitioners are challenging the transport of coal dust through the city of Vasco as it does not have the approval of the Mormugao Municipal Council, is contrary to the development plan, and such noxious activities that affect the health of citizens are specifically prohibited within the municipal and residential areas. The present transport of coal

through the town is unauthorised and illegal and should therefore be completely prohibited. It has commenced without the permissions of the local statutory authority or other authorities.

25. In the circumstances, petitioners pray for the following reliefs:

i. For a writ or order in the nature of a writ permanently restraining the MPT from carrying out coal handling operations at MPT;

ii) In the alternative, for a writ or order in the nature of a writ permanently restraining the MPT or its agents from transporting coal through the city of Vasco/Mormugao;

iii) That the Mormugao Port Trust be directed to obtain environment clearance for its operations before continuing with its coal handling operations at Mormugao harbour;

iv) For costs of this petition;

v) Any other reliefs this Hon'ble Court may be pleased to grant in public interest.

Panaji, Goa
9/4/2000

Deelip D Mandrekar
Petitioner

Substituted on 30/6/2003
by The Concerned Citizen of Vasco